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Domestic Relations--Parental Immunity Not Extended to Stepfather

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v. United States, 110 F.2d 556 (D.C. Cir. 1940); Jones v. United States, 234 F.2d 812 (4th Cir. 1956).

F. L. D., Jr.

Domestic Relations—Parental Immunity Not Extended to Steppfather.—P, an unemancipated minor, was seriously injured while riding in his stepfather's truck. The accident was the result of alleged negligent operation by the stepfather's agent. P was not employed by the stepfather but occasionally "helped out" in the business. P lived with his mother and stepfather, and the stepfather voluntarily stood in loco parentis to P. P sued the stepfather to recover damages for his personal injuries. Held, although the stepfather voluntarily stood in loco parentis, he was not under any legal obligation to care for, guide or control the child. Since the death of P's father this obligation had fallen to P's mother. Only the mother had the power to emancipate, and P's reciprocal legal obligations were only to his mother. There is no justification for extending the doctrine of parental immunity from suit to one voluntarily standing in loco parentis, such as stepfather. Burdick v. Nawrocki, 154 A.2d 242 (Conn. 1959).

It may be said as a general proposition of law, that a parent is immune from suit by an unemancipated minor for negligence resulting in personal injury to the child. Luster v. Luster, 299 Mass. 480, 13 N.E.2d 438 (1938); Crosby v. Crosby, 230 App. Div. 651, 246 N.Y.S. 384 (1930); Annot., 19 A.L.R.2d 425 (1951). The underlying reason of the parental immunity doctrine is quite simple. Society's concern for the stability of the family unit far exceeds the right of the individual to redress for the occasional tort by a parent to a child. Cowgill v. Boock, 189 Ore. 282, 218 P.2d 445 (1950).

The principal case refused to extend the doctrine of parental immunity to a stepfather voluntarily standing in loco parentis. The wisdom of the general rule was not questioned, but the denial of application of the rule was based entirely upon the legal relationship of the parties. There is a conflict of authority as to whether an unemancipated minor may sue a stepparent standing in loco parentis, but there is a definite trend to extend the immunity to a stepparent where only ordinary negligence is envolved. Reingold v. Reingold, 115 N.J.L. 532, 181 Atl. 158 (1935); 39 Am. Jur. Parent & Child § 90 (1942). The stepfather is not in loco parentis to the child merely by virtue of the fact he is a stepfather. Such a person must
put himself in the position of a natural father by assuring the obligations incident to being a father without having legally adopted the child. *Austin v. Austin*, 147 Neb. 109, 22 N.W.2d 560 (1946).

One who stands in loco parentis has the same rights and duties as a natural parent as long as he continues in that relationship and is bound to the same standard of care and diligence. *Cashen v. Riney*, 239 Ky. 779, 40 S.W.2d 339 (1931). If the stepfather standing in loco parentis has acquired the same rights and duties as a natural father it would seem that he should be immune from the stepchild’s action for damages. Many courts have held that he is not amenable to suits based on ordinary negligence. *Leyen v. United States*, 162 F.2d 79 (10th Cir. 1947); *Gillett v. Gillett*, 168 Cal.2d 102, 335 P.2d 736 (1959); *Trudell v. Leatherby*, 212 Cal. 678, 300 Pac. 7 (1931); *In Re Adoption of Cheney*, 244 Ia. 1180, 59 N.W.2d 685 (1953).

Those cases which have denied parental immunity to step-parents have generally involved a wilful element such as extreme cruelty. *Brown v. Cole*, 198 Ark. 417, 129 S.W.2d 245 (1939); *Treschman v. Treschman*, 28 Ind. App. 206, 61 N.E. 961 (1901); *Steber v. Norris*, 188 Wis. 366, 206 N.W. 173 (1925).

The West Virginia Supreme Court of Appeals has held that a natural parent may not be sued by an unemancipated minor for injuries resulting from ordinary negligence. *Securro v. Securro*, 110 W. Va. 1, 156 S.E. 750 (1931). However, the above decision was somewhat qualified by the later case of *Lusk v. Lusk*, 113 W. Va. 17, 166 S.E. 538 (1932), wherein the court held that a child could sue his father for injuries caused by the ordinary negligence of the father only when the father was covered by liability insurance. The court said that where the reason for the rule is gone the rule will not be applied.

In the principal case, the Connecticut court in expressing its opinion that an unemancipated minor may not maintain an action based on negligence against the parents has agreed with the general rule on this matter and supported the rule by a quotation which sets out the reason for the rule as follows: “The peace of society, and of the families composing society, and a sound public policy, designed to subserve the repose of families and the best interests of society, forbid to a minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered

The policy, as above stated, is clearly for the benefit of society, yet it is denied application in this instance, not on the basis of merit, but rather upon a technical distinction of legal relationships. It is difficult to visualize a valid reason for such a distinction. If the rational foundation of the rule is at all sound, it must be equally sound when applied to circumstances involving a stepparent standing in loco parentis. The undesirable conditions sought to be prevented by the application of this rule are present indeed in the situation presented by the principal case.

W. E. M.

**EMINENT DOMAIN—CONSTITUTIONAL TAKING—RECOVERY AGAINST MUNICIPAL AIRPORT BY ADJACENT PROPERTY OWNERS.—** Action by owners of vacant and unoccupied land adjoining a municipally owned airport to recover the diminution in value of their land caused by the fact that airplanes passed over the land at low altitudes while taking off and landing. Claims were stated in trespass and nuisance but the essence of the action was based primarily on the theory that the flights constituted an unconstitutional taking of property. *Held*, that the alleged continuing and frequent low flights over the land amount to a taking of an air easement for the purpose of flying airplanes over the land. The municipality had the power to acquire an approach way by condemnation but failed to exercise that power with the result that the continuing flights constituted an unconstitutional taking by the municipality. *Ackerman v. Port of Seattle*, 348 P.2d 664 (Wash. 1960).

The fundamental problem presented in this case was one of first impression in Washington, extending and settling areas of dispute raised in a previous case. *Anderson v. Port of Seattle*, 49 Wash. 2d 528, 304 P.2d 705 (1956). For a report of the principal case on the first hearing, see *Ackerman v. Port of Seattle*, 329 P.2d 210 (Wash. 1958).

Two conflicting fundamental principles are involved in the instant case, one being the ownership of private property and the right to the free use and enjoyment thereof, the other being the authority of the government to regulate the use and utilization of private property for the promotion of the public welfare. The